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July 2, 2014

The Honorable John Gleeson
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Dunston et al. v. Verde Steinberg & Pontell, LLC et al.; 1:14-cv-03280-JG-JMA

May It Please The Court:

I represent the Plaintiffs. Pursuant to Your Honor's Individual Rules, I respectfully request a pre-motion conference to file a motion for an Order, pursuant to Rule 12(f) of the Federal Rules of Procedure ("Fed. R. Civ. P.") and Rule 408 of the Federal Rules of Evidence, striking (1) lines 4, 9, 10, 11, 12, 13, 14, 15, 17, 19, 20, 21, 22, 23, 28, 29, and 30 of the Affidavit of Siobhan McGowan filed as CM/ECF Doc. 17, (2) Exhibits A [Doc. 17-1], C [Doc. 17-3], D [Doc. 17-4], E [Doc. 17-5], F [Doc. 17-6], G [Doc. 17-7], H [Doc. 17-8], J [Doc. 17-10], M [Doc. 17-13], O [Doc. 17-15], P [Doc. 17-16], R [Doc. 17-18], T [Doc. 17-20], V [Doc. 17-22], and W [Doc. 17-23] of the Affidavit of Siobhan McGowan filed under the respective aforementioned CM/ECF document ("Doc.") numbers, and (3) the memorandum of law filed by Hillary J. Raimondi, Esq. as CM/ECF document No. 16, with respect to any and all references of the lines number and exhibits, on the grounds that the three (3) aforementioned set of matter are (i) immaterial¹ and impertinent² under Rule 12(f) of the Federal Rules of Civil Procedure, (ii) constitute compromise offers and negotiations that are not admissible under Rule 408(a) of the Federal Rules of Evidence, and (iii) the above-listed matter on the record at this time unduly prejudices Plaintiffs.

Sincerely,

s/Brian L. Ponder

¹ Under FRCP 12(f), matter is "immaterial" if it has no essential or important relationship to the claim for relief or the defenses being pleaded. Zinaman v. USTS New York, Inc., (1992, SD NY) 798 F Supp 128).

² "Impertinent" matter consists of any allegation not responsive or relevant to the issues involved in the action and which could not be put in issue or be given in evidence between the parties. Gilbert v. Eli Lilly & Co., (1972, DC Puerto Rico) 56 FRD 116, 16 FR Serv 2d 1096.

CERTIFICATION OF SERVICE

The undersigned hereby certifies under the penalties of perjury that the foregoing document has been served upon all counsel of record by via CM/ECF system on July 1, 2014.

Dated: New York, New York
July 2, 2014

By: s/ Brian L. Ponder
BRIAN L. PONDER, ESQ.